

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

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| STATE OF MISSOURI, Respondent, |) | No. ED100299 |
| |) | |
| vs. |) | Appeal from the Circuit Court |
| |) | of the City of St. Louis |
| MARCUS WEAVER, Appellant. |) | Filed: February 24, 2015 |

Marcus Weaver appeals from the judgment entered on his convictions after a jury trial on three counts of statutory sodomy in the first degree, four counts of statutory sodomy in the second degree, one count of child molestation in the first degree, two counts of misdemeanor child molestation and four counts of incest.

AFFIRMED AS MODIFIED, WITH CORRECTIONS.

Division Three holds:

The State's isolated reference in closing argument to the notion that Weaver might commit the crime again did not amount to plain error. There was no plain error in the variance between the charging document and the instruction because it did not impact Weaver's defense. It was not plain error to omit the word "knowingly" in the statutory sodomy in the second degree instruction because that word was not required by the version of MAI applicable to Weaver's trial. The trial court did not err in allowing the victim to testify about incident in which her underwear was removed because the conduct was not attributable to Weaver and did not affect jury's verdict.

The judgment and sentence contain two clerical errors, which we correct on appeal. Count 3 for statutory sodomy in the first degree should be marked as an unclassified felony, not a Class D felony. The fifteen-year sentence on count 5 should run consecutively to counts 1, 3 and 4, but not consecutively to itself.

Opinion by: Robert G. Dowd, Jr., J.
Kurt S. Odenwald, P.J. and Gary M. Gaertner, Jr., J., concur.

Attorney for Appellant: Gwenda R. Robinson

Attorney for Respondent: Richard A. Starnes

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| <p>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</p> |
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